

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LORETTA MULVIHILL**

Claimant

VS.

**STORMONT VAIL REGIONAL MEDICAL CENTER**

Respondent

Self-Insured

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Docket No. 216,062

**ORDER**

Respondent appealed the preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict on November 1, 1996.

**ISSUES**

Respondent asked for Appeals Board review of the following issues:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent.
- (2) Whether claimant gave respondent timely notice of the accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

- (1) Both issues raised by the respondent are issues that grant the Appeals Board jurisdiction to review a preliminary hearing Order. See K.S.A. 1996 Supp. 44-534a.

Claimant, a 23-year employee of the respondent, alleged she injured her neck and left arm while performing her regular work activities as a linen service helper. Claimant

contends that the injury occurred during a series of accidents from July 13, 1996 through July 30, 1996.

Claimant testified she first noticed pain in her left arm at home after she had worked a four-hour shift on Sunday, July 13, 1996. Claimant's work activities on July 13, 1996, required her to push heavy carts weighing approximately 250-400 pounds full of dirty laundry up a ramp. Claimant then had to unload the laundry from the cart into separate 50-pound barrels. Claimant testified she had no symptoms before July 13, 1996. Claimant further established her symptoms in her left arm thereafter worsened and spread to her shoulder and neck area as she attempted to perform her work activities. She reached the point where she was no longer able to do her job because of the increased pain and claimant had to leave work on July 30, 1996, prior to finishing her regular shift. Claimant testified she informed her immediate supervisor of her symptoms on July 15, 1996, and a few days later talked to her department director about her increasing symptoms. However, claimant did not notify the employer that her problems were work related until August 7, 1996. At that time, claimant made a report to Dave Brooks, respondent's health nurse.

Claimant first sought medical treatment for her left arm pain from her family physician, Dr. Stacy Weeks, on July 15, 1996. Dr. Weeks did not see claimant but referred her to the Midwest Occupational Health Service. The claimant was seen by a physician's assistant on July 15, 1996. The physician's assistant, after examining the claimant, referred her to Dr. Paul Payne, claimant's cardiologist, who was treating her at that time for a previous heart problem. Dr. Paul Payne took claimant off work for two days but did not find any increased heart problems.

Claimant's personal physician, Dr. Weeks, then referred claimant to Dr. Robert Payne, an orthopedic surgeon, for examination and treatment on July 24, 1996. Claimant was seen by both orthopedic surgeons, Dr. Payne and Dr. Gimple, who prescribed conservative treatment of traction and pain medication. Because claimant was not making sufficient progress, she was referred by Dr. Gimple for examination and treatment with Dr. John D. Ebeling, a neurosurgeon.

Dr. Ebeling diagnosed preexisting cervical spondylosis and left C6-C7 herniated disc. On September 3, 1996, Dr. Ebeling performed an anterior cervical discectomy and infusion with bank bone at the C5-C6 and C6-C7 levels. The medical records admitted at the preliminary hearing do not indicate that claimant related her left arm and neck problems to any specific activity at work. Dr. Ebeling, in a letter to claimant's attorney dated October 11, 1996, and in a letter to respondent dated October 14, 1996, opined that he could not attribute claimant's neck condition within a degree of medical certainty to her work activities.

The Administrative Law Judge found claimant had proven her neck problems were work related. The Appeals Board, for preliminary hearing purposes, affirms that finding of the Administrative Law Judge as the Appeals Board finds that claimant's testimony established that she did not have any symptoms until after she performed her work activities

on July 13, 1996. Claimant also established that as she continued to perform her work activities through July 30, 1996, her symptoms worsened spreading into her shoulder and her neck finally causing her to be physically unable to perform her job duties. The medical records entered into evidence at the preliminary hearing establish that claimant had a preexisting cervical spondylosis condition. The Appeals Board finds that it is reasonable to conclude that this spondylosis condition was aggravated by claimant's work activities. If a work-related accident either aggravates, accelerates, or intensifies a preexisting condition, the claim is compensable. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

(2) The current notice statute requires the claimant to give the respondent notice of a work related accident within ten days or show just cause for failure to give notice within ten days. The Administrative Law Judge found claimant had not given notice within ten days but found claimant had shown just cause for failure to give the ten-day notice.

The Appeals Board finds that the appropriate date of accident in this case is the last day claimant worked before leaving work because of her injuries, July 30, 1996. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). The preliminary hearing record established that claimant gave notice of her accidental injury to the respondent through the respondent's health nurse on August 7, 1996. Accordingly, the Appeals Board finds that utilizing a date of accident of July 30, 1996, and a notice date of August 7, 1996, that the claimant gave respondent the required notice within ten days.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict on November 1, 1996, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1997.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
James C. Wright, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director